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December 10, 2012

To: Clients and Friends

From: David F. Dulock

Subject: FHA Interpretive Rule Regarding Prohibited Sources of Minimum Cash Investment Under the National Housing Act

In the December 5, 2012, issue of the Federal Register (Vol. 77, Pages 72219 – 72223, click *here*) the Federal Housing Administration (FHA) published an Interpretive Rule to clarify the scope of the provision in the National Housing Act that prohibits certain sources of a mortgagor's funds for the required minimum cash investment for single family mortgages to be insured by the FHA.

In order to qualify a mortgage for FHA insurance, Section 203(b)(9)(A) of the National Housing Act requires the mortgagor to pay "in cash or its equivalent, on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property or such larger amount as the Secretary may determine." Since October 1, 2008, however, Section 203(b)(9)(C) of the National Housing Act requires that "[i]n no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale: (i) The seller or any other person or entity that financially benefits from the transaction ***[or]*** (ii) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i)."

FHA has issued this Interpretative Rule to clarify that Section 203(b)(9)(C) of the National Housing Act does not apply to State and local government programs that provide funds toward the required minimum cash investment required by Section 203(b)(9)(A). In other words, section 203(b)(9)(C) does not prohibit FHA from insuring mortgages originated as part of the homeownership programs of Federal, State, or local governments or their agencies or instrumentalities when such agencies or instrumentalities also directly provide funds toward the required minimum cash investment required by Section 203(b)(9)(A).